

Statement of PPL Montana
Before the Judiciary Committee
Of the Montana State Senate
Regarding Senate Bill No. 471

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Mr. Chairman and members of the Committee:

My name is Holly Franz. I represent PPL Montana. In light of the serious concerns presented by SB 471, PPL Montana opposes this bill.

Water rights are valuable property rights. The drafters of Montana's 1972 Constitution included a specific provision recognizing and preserving their validity – Article IX, §3 states that “all existing rights to the use of any waters for any useful or beneficial purposes are hereby recognized and confirmed.” SB 471 directly violates this constitutional mandate by subordinating the priority dates of one select water user at one dam in favor of other junior water users. This attempt to extinguish vested property rights is ill-advised for several reasons.

Irrespective of SB 471's clear constitutional deficiencies as a matter of principle, the legislature should not be in the business of retroactively modifying vested property rights. For this reason alone, SB 471 should be rejected.

In addition, SB 471 sets a dangerous precedent that cannot be ignored. Today it's the priority dates of a single owner of particular water rights. Whose property rights will be targeted for modification or elimination tomorrow – another select entity or type of use such as irrigation, instream flow or even rights for personal consumption?

Although no fiscal note has yet been prepared, this Committee should not ignore the State's potential liability under this bill. A water right's value is determined primarily by its priority date. The subordination of existing priority dates will substantially reduce the value of the affected water rights. A reduction in value of this magnitude will certainly result in Fifth Amendment takings claims against the State.

Even though SB 471 does not directly affect PPL Montana's water rights, it is opposed to this bill. The statutory reference in § 85-1-122 is limited to Cabinet Gorge, a dam located in the State of Idaho. Because Cabinet Gorge is an Idaho dam, its water rights are subject to the doctrine of equitable apportionment between states. That same doctrine cannot, and should not be applied to the Montana state-based water rights at the Noxon dam.

For these reasons, I urge the Committee to reject SB 471.